

HIPAA - Privacy – Parents and Minors

TRICARE Management Activity, Electronic Business Policy & Standards

January 2003

OSD(HA), TMA eBPS

Highlights

- ◆ General Requirement
- ◆ Exceptions to the “Personal Representative” Rule
- ◆ Relation to State Law
- ◆ Parental Access to Medical Records
- ◆ Treatment and Consent

HIPAA PROGRAM OFFICE

Skyline 5, Suite 810
5111 Leesburg Pike
Falls Church, VA
22041-3206
Ph: 703-681-5611
Fax: 703-681-8845

TMA HIPAA Website:
www.tricare.osd.mil/hipaa

E-Mail:
hipaamail@tma.osd.mil



HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

General Requirement

The Privacy Rule provides individuals with certain rights with respect to their personal health information, including the right to obtain access to and to request amendment of health information about themselves. These rights rest with that individual, or with the “personal representative” of that individual. In general, a person’s right to control protected health information (PHI) is based on that person’s right (under state or other applicable law, e.g., tribal or military law) to control the health care itself.

Because a parent usually has authority to make health care decisions about his or her minor child, a parent is generally the “personal representative” of his or her minor child under the Privacy Rule and has the right to obtain access to health information about his or her minor child. This would also be true in the case of a guardian or other person acting *in loco parentis* of a minor child.

When a physician (or other covered entity) reasonably believes in his or her professional judgment that the child has been or may be subjected to abuse or neglect, or that treating the parent as the child’s personal representative could endanger the child, the physician may choose not to treat the parent as the personal representative of the child.

Exceptions to the “Personal Representative” Rule

There are exceptions in which a parent might not be the “personal representative” with respect to certain health information about a minor child. In the following situations, the Privacy Rule defers to determinations under other law that the parent does not control the minor’s health care decisions and, thus, does not control the PHI related to that care.

- ◆ When state or other law does not require consent of a parent or other person before a minor can obtain a particular health care service, and the minor consents to the health care service, the parent is not the minor’s personal representative under the Privacy Rule. For example, when a state law provides an adolescent the right to consent to mental health treatment without the consent of his or her parent, and the adolescent obtains such treatment without the consent of the parent, the parent is not the personal representative under the Privacy Rule for that treatment. The minor may choose to involve a parent in these health care decisions without giving up his or her right to control the related health information. Of course, the minor may always have the parent continue to be his or her personal representative even in these situations.
- ◆ When a court determines or other law authorizes someone other than the parent to make treatment decisions for a minor, the parent is not the personal representative of the minor for the relevant services. For example, courts may grant authority to make health care decisions for the minor to an adult other than the parent, to the minor, or the court may make the decision(s) itself. In order not to undermine these court decisions, the parent is not the personal representative under the Privacy Rule in these circumstances.



In the following situations, the Privacy Rule reflects current professional practice in determining that the parent is not the minor's personal representative with respect to the relevant PHI:

- ♦ When a parent agrees to a confidential relationship between the minor and the physician, the parent does not have access to the health information related to that conversation or relationship. For example, if a physician asks the parent of a 16-year-old if the physician can talk with the child confidentially about a medical condition and the parent agrees, the parent would not control the PHI that was discussed during the confidential conference.

Relation to State Law

In addition to the provisions (described above) tying the right to control information to the right to control treatment, the Privacy Rule also states that it does not preempt state laws that specifically address disclosure of health information about a minor to a parent. This is true whether the state law authorizes or prohibits such disclosure. Thus, if a physician believes that disclosure of information about a minor would endanger that minor, but a state law requires a disclosure to a parent, the physician may comply with the state law without violating the Privacy Rule. Similarly, a provider may comply with a state law that requires disclosure to a parent and would not have to accommodate a request for confidential communications that would be contrary to state law. See the Fact Sheet entitled, "State Laws" for further information on this topic.

Parental Access to Medical Records

The Privacy Rule generally allows parents, as their minor children's personal representatives, to have access to information about the health and well-being of their children when state or other underlying law allows parents to make treatment decisions for the child. There are two exceptions: (1) when the parent agrees that the minor and the health care provider may have a confidential relationship, the provider is allowed to withhold information from the parent to the extent of that agreement; and (2) when the provider reasonably believes in his or her professional judgment that the child has been or may be subjected to abuse or neglect, or that treating the parent as the child's personal representative could endanger the child, the provider is permitted not to treat the parent as the child's personal representative with respect to health information.

Treatment and Consent

Does the Privacy Rule provide rights for children to be treated without parental consent?

The Privacy Rule does not address consent to treatment, nor does it preempt or change state or other laws that address consent to treatment. The Rule addresses access to health information, not the underlying treatment.

If a child receives emergency medical care without a parent's consent, can the parent get all information about the child's treatment and condition?

Even though the parent did not provide consent to the treatment in this situation, under the Privacy Rule, the parent would still be the child's personal representative. This would not be so only when the minor provided consent in his/her own right (and no other consent is required) or the treating physician suspects abuse or neglect or reasonably believes that releasing the information to the parent will endanger the child.